

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

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**REPLY COMMENTS OF ENCOMPASS, INC. IN SUPPORT OF A COMBINED
AUCTION OF D, E, AND F BLOCK LICENSES AND REVISING THE
STOPPING RULES TO PERMIT BIDDING TO CLOSE ON INACTIVE LICENSES**

Encompass, Inc. ("Encompass"), by its undersigned counsel, hereby submits its Reply to the comments filed on the FCC Public Notice dated December 23, 1994.^{1/} The auctioning of PCS licenses promises to bring increased competition to the wireless services market. To effectively compete in this highly competitive environment, new PCS providers must enter the wireless market without delay and offer consumers a range of services at competitive prices.

To this end, Encompass supports those commenters who urge the Commission to:

- (i) consolidate "D," "E," and "F" block licenses into a single auction;
- (ii) amend the collusion rules to allow bidders in a combined "D," "E," and "F" auction to engage in discussions with other bidders for licenses in the same geographical area;
- (iii) extend the installment payment option and the \$0.015 per MHz per population upfront payment requirement to entrepreneurs that bid on "D" and "E" block licenses; and
- (iv) revise the stopping rules to permit bidding to close on inactive licenses.

^{1/} See FCC Public Notice "FCC Announces Short Form Date For 493 Licenses Located in the C Block For Personal Communications Services in the 2 GHz Band and Requests Comment On Auction Of F Block Licenses" (December 23, 1994) (*Public Notice*).

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Further, to expedite the competitive bidding process, Encompass urges the Commission to revise its activity rule to require bidders to be initially active on two-thirds of their authorized "pops" and then fully active on all of their authorized "pops" in both the "C" block auction and in the combined auction of "D," "E," and "F" block licenses. Encompass firmly believes that based upon its extensive experience in the marketplace, these revisions to the PCS rules are necessary in order for new entrants to compete in the wireless services market.

I. A Combined Auction of "D," "E," and "F" Block Licenses Will Expedite Service To the Public and Will Provide Bidders Additional Flexibility In Pursuing PCS Licenses

A combined auction of "D," "E," and "F" block licenses would (i) expedite service to the public by auctioning all of the remaining broadband PCS licenses in a timely manner, (ii) provide entrepreneurs and designated entities a second opportunity to obtain 30 MHz of PCS spectrum, (iii) allow non-entrepreneurs to pursue 20 MHz aggregation strategies, (iv) not penalize entities seeking only a single 10 MHz license, and (v) promote more vigorous competition for the 10 MHz BTA licenses, which would yield more revenue from the auctioning of the public spectrum.

Commenters opposed to a combined auction claim that an auction with 1,479 licenses up for competitive bidding would be administratively complex. These commenters argue that a combined auction would lead to confusion because some bidders would be subject to the designated entity rules while other bidders would be subject to an entirely different set of rules. These commenters also contend that the "D," "E," and "F" block licenses are not

interdependent and that it is unlikely a significant number of bidders would pursue 20 MHz or 30 MHz aggregation strategies.

First, the Commission should be well-prepared for a combined auction of 1,479 "D," "E," and "F" block licenses after administering an auction of 493 "C" block licenses. The experience of administering an auction of 99 "A" and "B" block licenses will prepare the Commission to administer the upcoming auction of 493 "C" block licenses (five times more licenses). Similarly, the experience of administering an auction of 493 "C" block licenses will likely prepare the Commission to administer an auction of 1,479 "D," "E," and "F" block licenses (three times more licenses). Further, by incrementally increasing the size of the auctions, the Commission will ensure that all PCS licenses are auctioned in a timely manner; otherwise, if the Commission sequentially auctions the "C," "D," "E," and then "F" block licenses, the completion of PCS licensing would be significantly delayed and certain licensees would be seriously disadvantaged by their late entry into the wireless market. The Commission should therefore consolidate the "D," "E," and "F" block licenses into a single auction, unless it subsequently concludes after administering the "C" block auction that it is not prepared to conduct an auction of 1,479 licenses.

Second, a combined auction of entrepreneur block licenses ("F" block licenses) and non-entrepreneur block licenses ("D" and "E" block licenses) would not lead to confusion. Even though entrepreneurs and non-entrepreneurs are subject to different rules on the payment for PCS licenses (*i.e.*, upfront payments, downpayments, installment payments, bidding credits), these entities are subject to the same rules governing the actual auction process (*i.e.*, bidding activity, bid increments). Thus, a combined auction of entrepreneur

and non-entrepreneur licenses would not likely lead to confusion by the FCC, as auction administrator, or by the auction participants.

Lastly, the strong interdependence of the 10 MHz BTA "D," "E," and "F" block licenses supports a combined auction for these licenses. These licenses are functionally equivalent: they all serve basic trading areas ("BTAs") and include 10 MHz of PCS spectrum. Further, assuming that the Commission extends the installment payment option to entrepreneurs that win "D" and "E" block licenses, there would effectively be no difference between winning an "F" (entrepreneur) block license and an "D" or "E" (non-entrepreneur) block license, except any applicable bidding credits. Moreover, if the experience from the narrowband auction is any indication of the net amount that bidders will pay for broadband PCS licenses, bidding credits may not be a significant differentiating factor between entrepreneur and non-entrepreneur block licenses. This is so because in the narrowband PCS auction, the net amount paid for a license (with or without bidding credits) was essentially the same. If the same holds true for the broadband licenses, an entrepreneur would pay the same *net* amount for a "D," "E," or "F" block license. Thus, the "D," "E," and "F" block licenses are highly interdependent -- they are substitutes for each other and also are complementary to each other in that they can be aggregated to create 20 MHz or 30 MHz of PCS spectrum comparable to the "A," "B," and "C" block licenses.

II. The Commission Should Revise Its Stopping Rules To Permit Bidding To Close On Inactive "C" Block Licenses and Require Bidders To Be Initially Active On Two-Thirds Of Their Authorized POPs In the "C" Block Auction and the Combined Auction of "D," "E," and "F" Block Licenses

Encompass agrees with GO Communications that the Commission should revise its simultaneous stopping rule to permit bidding to close on inactive licenses in the "C" block auction. However, rather than sequentially closing bidding on only those licenses in the top 50 markets as proposed by GO Communications, Encompass supports an earlier proposal by Metrex Communications Group, Inc. to revise the stopping rule to close competitive bidding on any BTA license in which no acceptable bids are received after five rounds (*see* Attachment A for a copy of Metrex' Petition for Reconsideration filed on August 22, 1994 in PP Docket No. 93-253). As explained in these comments, adherence to the simultaneous stopping rule for all licenses will promote "eleventh hour" maneuvers by bidders and could prevent the implementation of regional strategies. More importantly, a simultaneous stopping rule will significantly extend the duration of the auction. With 493 licenses up for competitive bidding in the "C" block auction, bidding will likely initially proceed at a slow pace, and, if the A/B auction is any indication, there may be no bidding activity on several licenses. The result could be a very prolonged auction with little significant activity during the first stage of the auction.

Thus, to expedite the auctioning of 493 licenses, the Commission should (i) revise its stopping rule to close bidding on those licenses in which no acceptable bids are received after five rounds, (ii) proceed directly to the licensing stage for those licenses in which bidding has closed, and (iii) require bidders to be active on two-thirds of their authorized "pops" at the start of the auction. These steps will expedite the licensing of new PCS providers

without compromising the public interest benefits of a simultaneous multiple round auction. Further, as the Commission has repeatedly recognized, the auction process must be flexible enough to respond to marketplace factors. Speed of bringing PCS to the consumer market will be a critical factor in the success of new wireless service providers.

Today, consumers are able to obtain wireless services from cellular providers, resellers of cellular services, and, in many areas, specialized mobile radio ("SMR") and other wireless providers. Soon, consumers will also be able to obtain wireless services from the winners of "A" and "B" block licenses. All of these wireless providers will have a significant competitive advantage over subsequent entrants into the wireless services market. Thus, it is imperative that the Commission complete the auctioning of "C" block licenses as expeditiously as possible. By revising the stopping rule, proceeding directly to the licensing stage after bidding closes on a license, and beginning the "C" block auction at activity stage II, where bidders must be active on two-thirds of their authorized "pops," the Commission will allow marketplace forces, not regulatory imperatives, to determine the success of new PCS providers.

III. Conclusion

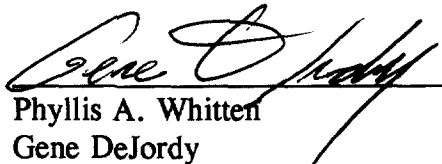
Encompass respectfully urges the Commission to (i) consolidate "D," "E," and "F" block licenses into a single auction; (ii) amend the collusion rules; (ii) extend the installment payment option and the \$0.015 per MHz per population upfront payment requirement to entrepreneurs that bid on "D" and "E" block licenses; (iv) revise the stopping rules to permit

bidding to close on inactive licenses; and (v) revise the activity rule to require bidders to be initially active on two-thirds of their authorized "pops."^{2/}

Respectfully submitted,

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Date: February 9, 1995

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^{2/} Encompass also urges the Commission to retain the current level of bidding credits for designated entities, or in the alternative, adopt a uniform 25% bidding credit for all designated entities.

Attachment A

Before the
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In the Matter of)
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PP Docket No. 93-253

**PETITION FOR RECONSIDERATION OF
METREX COMMUNICATIONS GROUP, INC.**

Metrex Communications Group, Inc. ("Metrex") hereby petitions the Federal Communications Commission ("FCC" or "Commission") for limited reconsideration of the FCC's Fifth Report and Order in this proceeding.^{1/} Metrex requests that the Commission modify the stopping rules adopted by the FCC in its Fifth Report and Order to provide for the individual closing of broadband PCS BTA licenses after five rounds in which no acceptable bids are received for each BTA license. The significant number of broadband PCS licenses that will be auctioned for the BTAs and the need for certainty in the rules to develop viable bidding strategies warrants that the Commission immediately revise its rules to include an immediate stopping rule rather than declare the stopping rule for the BTA licenses in a public notice issued just prior to the auction.

I. INTRODUCTION -- METREX - A LEADING SMALL BUSINESS COMMUNICATIONS COMPANY

Metrex is a firmly established communications company with a wealth of experience in the telecommunications industry. Metrex

^{1/} In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, (rel. July 15, 1994), Fifth Report and Order ("Fifth Report and Order").

qualifies as a small business as defined in the Fifth Report and Order and intends to bid for broadband PCS licenses in the entrepreneurial block for BTAs in the greater southeast region of the United States. The principals of Metrex have a combined total of 50 years in the telecommunications industry and have owned and operated a wide range of wireless and fiber optic telecommunications systems. Metrex's principals entered the telecommunications industry as entrepreneurs in 1978 when they constructed and operated a regional paging system headquartered in Birmingham, Alabama.

In the mid 1980's, Metrex's principals were partners in and the principal operators of cellular systems operating in several cellular MSAs, including Birmingham, Alabama and Montgomery, Alabama. The Birmingham and Montgomery cellular systems successfully captured a significant percentage of the cellular market in the face of stiff competition from the wireline carrier. The principals of Metrex also have constructed fiber optic facilities in Atlanta that have been merged with MFS Communications Company ("MFS") and are used for MFS' Atlanta area competitive access network.

The breadth of experience and repeated success of Metrex's principals as entrepreneurs in the telecommunications industry put Metrex in a prime position to bid for and successfully operate broadband PCS systems. As a small business, Metrex will bid for broadband PCS licenses in the entrepreneurial block on a BTA basis.

II. THE FCC SHOULD IMMEDIATELY ADOPT AN INDIVIDUAL STOPPING RULE FOR ALL BROADBAND PCS BTA LICENSES

In the *Fifth Report and Order*, the Commission has proposed to apply a simultaneous stopping rule for broadband PCS BTA licenses.^{2/} The FCC also retained its discretion to adopt a hybrid stopping rule or to allow bidding to close individually for broadband PCS BTA licenses based on its experience with the auctions. The FCC intends to announce its decision on a stopping rule in a public notice released before the auctions.^{3/}

Metrex requests that the Commission revise its competitive bidding rules to uniformly apply an individual stopping rule for all broadband PCS BTA licenses. The individual stopping rule should close out each BTA license if no acceptable bidding rules are accepted after 5 rounds of bidding. Adoption of the individual closing rule on licenses for each BTA will promote the Commission's goal of ensuring a wide dissemination of licenses among applicants.

Adherence to the FCC's simultaneous closing rule for all licenses will promote 11th hour maneuvers by bidders and could prevent the implementation of regional strategies by companies bidding in the entrepreneurial blocks. Indeed, the simultaneous stopping rule could result in the loss of a license to an entity that truly valued the license and thwart a regional strategy because of the collateral effects of the stopping rule, the

^{2/} *Fifth Report and Order* at ¶ 47.

^{3/} *Id.*

activity rule and bidding in separate markets. The FCC's creation of the entrepreneurial band is designed to stimulate the participation of small and entrepreneurial companies. In order to compete against the other four PCS licensees and particularly those licensees for channels A and B which will be awarded on an MTA basis, entrepreneurial block bidders must be able to develop and implement regional licensing strategies. A regional strategy, in turn, will be dependent on the closing out of certain pivotal license markets prior to the conclusion of the auction. The simultaneous stopping rule will prevent the certainty required for entrepreneurial block bidders to pursue regional strategies. Regional strategies are particularly important for companies that do not intend to pursue a combination of licenses that extend nationwide, which bidders in the entrepreneurial block are foreclosed from doing under the FCC's 10% cap. If maintained, therefore, the simultaneous closing rule will severely hamper the possibility of success of small businesses in the auctions.

A declaration by the Commission that it will apply an individual closing rule to broadband PCS BTA licenses is appropriate and should be adopted by the Commission on reconsideration not announced later through a public notice. The closing rule is a important component in the development of a bidding strategy. Strategies are now being formulated by bidders and are dependent on the definitiveness of the FCC's rules.

WHEREFORE, Metrex respectfully requests that the Commission modify its competitive bidding rules adopted in the *Fifth Report and Order* to include a simultaneous stopping rule for broadband PCS licenses awarded for BTAs.

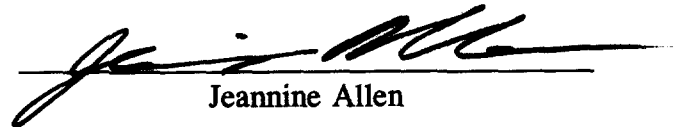
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CERTIFICATE OF SERVICE

I, Jeannine Allen, hereby certify that on this 9th day of February, 1995, copies of Reply Comments of Encompass, Inc. in Support of a Combined Auction of D, E, and F Block Licenses and Revising the Stopping Rules to Permit Bidding to Close on Inactive Licenses were delivered by first-class mail or by courier to all parties on the following service list.



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